

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: David G. Filippi	)	
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Application No.: 10/798,779	)	Group Art Unit: 3637
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Filed: March 12, 2004	)	
	)	Examiner: Christine T. Cajilig
For: GUTTER COVER SYSTEM	)	
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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Declaration by Timothy Staub

Dear Sir:

I, Timothy G. Staub, declare and say:

1. I am President and CEO of Elko Products, the assignee of record. I am also President of Gutter Genius, LLC. I have studied the Office Action of February 20, 2007 in this case and the amended claims presented concurrently herewith. Similarly, I have restudied the present application. I submit this Declaration in support of patentability of the present application.

2. The claims as amended capture the commercial embodiment of the Elko "GuttaGard" gutter protection system and gutter clip. Specifically, the GuttaGard system includes a solid sheet with one longitudinal edge formed into a curl. The cover extends downwardly and outwardly from the lowermost edge of a roof so that the curl

extends downwardly toward a gutter. The GuttaGard clip is a flat body of a given thickness. Because the GuttaGard system eliminates fasteners found in other gutter protection clips, the entire clip exists within a single plane. The clip includes a first throat adapted to engage the cover's curl. An optional second throat engages the wall of a gutter (vertical or horizontal wall). The clip provides a locking lever adjacent to the second throat. The lever has a hinge so that the first locking lever is adapted to be bent at the hinge to lock the second throat onto the gutter.

3. Even without fasteners, the GuttaGard clip provides an effective mechanism to positively secure the gutter cover in the proper position on the gutter. The clip also securely holds the gutter cover during high winds or inclement weather. The structure of the GuttaGard clip makes it easy to install and relatively inexpensive to produce.

4. Consumers of the GuttaGard system and clip include gutter installers and residential and commercial end users. End users have very specific demands regarding the price, appearance, and functionality of gutter cover systems. I have found the unique gutter cover system and clip of the present invention to be successful with gutter installers and end users. The success of the gutter cover system and gutter clip of the subject application is the direct result of our product, as currently claimed, to meet these end user demands.

5. The gutter cover system and clip are most commonly sold via gutter installers who present various gutter protection options to the consumer. The system and clip provide advantages over the cited Stevens reference and other prior art system during installation of the product. As noted, the product is easy to install, while being highly effective and reliable (less service calls for installers). The quick system installation

allows the professional installer to visit more residences or commercial sites. This results in lowered labor costs and the ability to reach more customers. In addition, relatively little training or experience is required to install the gutter cover system. Gutter installers, therefore, suggest our product to end-users. Well over 50% of our gutter installer customers now sell our product exclusively. In other words, of the gutter installers that have experienced our product, a majority of the installers no longer sell any competing systems or products.

6. Gutter installers emphasize to consumers the low profile of our planar clip as well as the fact that the system is installed without fasteners passing through the consumer's gutter. The ability to bend the claimed clip provides a quick-connect clip not found in Stevens' or other prior art references. Residential consumers routinely select our product as the installers are enthused about our product, including the reliability it provides and the ease of installation.

7. Elko Products does not engage in advertising of any note. In 2006, Elko Products spent less than \$1,000 for advertising the product. The success of our product is not due to significant advertising or "cut throat" pricing. The product, as claimed in the patent application, is a superior product that gutter installers continue to learn about by word-of-mouth.

8. I have searched the accounting and financial documents of Elko Products and determined the following:

- From October 7, 2004 when Elko Products purchased the rights to the new clip through April 30, 2007 Elko Products generated overall revenue of \$1,248,351 in total sales.

- Over \$1,212,540 dollars of the revenue from October 7, 2004 through April 30, 2007 is directly attributable to sales of the claimed gutter cover system and gutter cover clip.
- Gross profits from GuttaGard were approximately \$620,670 from October 7, 2004 through April 30, 2007.
- Sales from GuttaGard system, as claimed by the subject invention, compare to sales of \$4,452 for the previous Elko clip that was obsolesced by the subject invention for the period October 7, 2004 through April 30, 2007.
- Elko Products has sold more than 2 million feet of gutter cover system in accordance with the claims of the application in 2006. This is equivalent to about 14,285 households (assuming an average household gutter profile of 140 feet).
- Elko Products has built a national reputation for manufacturing and marketing the GuttaGard product with the Gutter Genius clip (the subject invention) as a high quality, easy-to-install alternative to the highly advertised gutter protection brands, and has secured a protected position as a direct result of the subject invention.

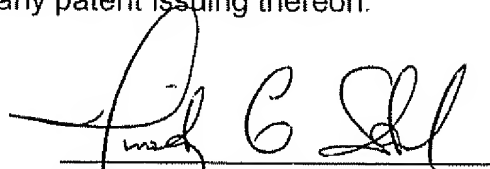
9. Elko Products is the exclusive and sole supplier of gutter covers to Stevens, owner of the primary reference cited in the Office Action. By way of comparison, Elko Products supplied 20,400 feet of gutter covers to Stevens in from October 7, 2004 through April 30, 2007 compared to an estimated 2,100,000 feet of our own proprietary gutter cover system.

10. Gutter installation and gutter cover products are currently local or regional in nature. Therefore, it is impossible to calculate the market share of the claimed gutter cover system as a whole. Sales tend to grow by word-of-mouth. Sales are particularly strong in North Carolina, Virginia, South Carolina and Georgia. While it is impossible to accurately forecast demand and market share figures either nationally or regionally, we anticipate our market share in Raleigh, North Carolina in particular to be approximately 10%, and in Richmond, Virginia to be approximately 4-5%. We do anticipate continued growth in volume and market share as a direct consequence of the attributes of the subject invention. Elko Products was recently invited to demonstrate the product on and for the QVC network.

11. Largely due to the commercial success of the claimed gutter cover system and clip, the Gutter Genius, LLC entity was formed to create and pursue gutter protection franchises as a professionally installed system and as an independent seller of self installed gutter protection system (under the Gutter Genius DIY product nomenclature).

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 5/29/07

  
Timothy G. Staub